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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582.714	10/03/2000	Arnaud Vilbert	5725.0622	8388

7590 04/11/2003

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1300 I Street N W  
Washington, DC 20005

EXAMINER
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WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 04/11/2003

25

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/582,714	Applicant(s) VILBERT, ARNAUD	
	Examiner Lauren Q Wells	Art Unit 1617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27-30 and 32-114 is/are pending in the application.
- 4a) Of the above claim(s) 28-30 and 32-114 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☒ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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### **DETAILED ACTION**

Claims 27-30 and 32-114 are pending. Claims 28-30 and 32-114 are withdrawn from consideration, as they are directed to non-elected subject matter. The Amendment filed 12/27/02, Paper No. 24, amended claims 27-29, 35, 36, 41, 59, 60, 62-63 and added claims 74-114.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/30/02 has been entered.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 27, drawn to a process for shaping or holding a hairstyle, classified in class 424, subclass 70.1.
- II. Claim 28, drawn to a process for manufacturing a hairstyling product, classified in class 516, subclass 1.
- III. Claims 29-73, drawn to a dispenser device, classified in class 222, subclass 630.
- IV. Claims 74-114, drawn to a hairstyling composition, classified in class 424, subclass 401.

The inventions are distinct, each from the other because of the following reasons:

Inventions IV and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process can be used to make aerosolized spray paints.

Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product can be practiced with a multitude of other known commercial hairsprays.

Inventions IV and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation. A hairstyling composition can be in the form of a gel which cannot be dispensed in an aerosolized device.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Rahul Das on 3/18/03 a provisional election was made with traverse to prosecute the invention of Group I, claim 27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 28-30, 32-114 are

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withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

During this telephone conversation, the attorney conveyed that the species elected for the polycondensate and film-forming polymer on 10/24/01, Paper No. 11, was to continue being prosecuted.

A search of lactic acid/ethylene glycol P-dimethylolpropanoic acid-isophorone diisocyanate polyester polycondensate as the species of the polycondensate was not found. Thus, claims limited to this compound would be allowable. The Examiner went on to the next species of a polycondensate of SIL 700 (polysiloxane prepolymer), 4,4—diphenylmethane diisocyanate, and dimethylolpropionic acid. The search was not extended because prior art was found to render the species obvious.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mougin et al. in combination with the Handbook of Cosmetic Science and Technology.

The instant claim is directed toward a process for shaping or holding a hairstyle, comprising dispensing a hair composition using a dispenser device, said dispenser device comprising a reservoir containing said hair composition, wherein the composition comprises, in a cosmetically acceptable medium, at least one block chosen from polyurethane and polyurea

XW  
(5,643,581)

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blocks and at least one film forming polymer, wherein the polycondensate and film-forming polymers are different and the device dispenses droplets of the composition that have an average diameter of less than or equal to 80 micrometers.

Mougin et al. teach cosmetic compositions comprising, in a cosmetically acceptable carrier, at least one pseudolatex based on a multiblock polycondensate which contains a polysiloxane block and a polyurethane and/or polyurea block, wherein the polyurethane and/or polyurea block further comprises anionic or cationic groups. The pseudolatex has a particle size from 5 to 400 nanometers and comprises 0.5-20% of the composition. The compositions are taught as hair care products that can be in the form of aerosols. Film-forming agents, such as gums, crosslinked polyacrylic acids, glyceryl poly(meth)acrylate polymers, polyvinylpyrrolidone, polyvinyl alcohols, crosslinked acrylamide polymers and copolymers, crosslinked metharyloyloxyethyltrimethylammonium chloride homopolymers and others are taught as thickening agents in the compositions. Exemplified is a setting spray. The reference lacks an exemplification of instant claim 27. See abstract; Col. 2, line 27 - Col. 8, line 49; Col. 10, line 4 - Col. 13, line 44; Col. 17, line 1; Col. 18, line 54; KW

The Cosmetic Handbook of Science and Technology defines an aerosol as a liquid, solid, gas or mixture thereof, discharged by a propellant force of liquefied and/or non-liquefied compressed gas, usually from a disposable dispenser, through a valve. Aerosols are taught as unique delivery devices that are superior to pump-sprays. Hairsprays are taught as conventionally having an average particle size of 50 micrometers. See pages 263, 265, 275-278.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to exemplify an aerosol comprising polycondensate and film-forming agents, wherein the composition has an average particle size of 50 micrometers because of the expectation of

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achieving an aerosolized setting spray that uniformly and quickly delivers the setting composition to the hair.

It is respectfully pointed out that the definition of an aerosol, as defined by the Handbook of Cosmetic Science and Technology, encompasses a dispenser device comprising a reservoir containing a composition.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mougin et al. in combination with the Handbook of Cosmetic Science and Technology, both in view of Samain et al. (6,423,297).

Mougin et al. teach cosmetic compositions comprising, in a cosmetically acceptable carrier, at least one pseudolatex based on a multiblock polycondensate which contains a polysiloxane block and a polyurethane and/or polyurea block, wherein the polyurethane and/or polyurea block further comprises anionic or cationic groups. The pseudolatex has a particle size from 5 to 400 nanometers and comprises 0.5-20% of the composition. The compositions are taught as hair care products that can be in the form of aerosols. Film-forming agents, such as gums, crosslinked polyacrylic acids, glyceryl poly(meth)acrylate polymers, polyvinylpyrrolidone, polyvinyl alcohols, crosslinked acrylamide polymers and copolymers, crosslinked metharyloyloxyethyltrimethylammonium chloride homopolymers and others are taught as thickening agents in the compositions. Exemplified is a setting spray. The reference lacks an exemplification of instant claim 27 and polydimethyl/methylsiloxane containing propylthio-3-methacrylate groups/methacrylate/methacrylic acid, as the film-forming polymers.

The Cosmetic Handbook of Science and Technology defines an aerosol as a liquid, solid, gas or mixture thereof, discharged by a propellant force of liquefied and/or non-liquefied

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compressed gas, usually from a disposable dispenser, through a valve. Aerosols are taught as unique delivery devices that are superior to pump-sprays. Hairsprays are taught as conventionally having an average particle size of 50 micrometers. See pages 263, 265, 275-278.

Samain et al. teach polydimethyl/methylsiloxane containing propylthio-3-methacrylate groups/methacrylate/methacrylic acid as a film-forming polymer that has good fixing/shaping qualities and provides excellent cosmetic properties such as softness, disentangling and good feel to the hair. These polymers can be combined with other fixing polymers such as polyvinylpyrrolidones. See Col. 7, lines 30-55; Col. 6, lines 31-65; Col. 1, lines 5-59.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to exemplify an aerosol comprising polycondensate and film-forming agents, wherein the composition has an average particle size of 50 micrometers because of the expectation of achieving an aerosolized setting spray that uniformly and quickly delivers the setting composition to the hair.

It is respectfully pointed out that the definition of an aerosol, as defined by the Handbook of Cosmetic Science and Technology, encompasses a dispenser device comprising a reservoir containing a composition.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the polydimethyl/methylsiloxane containing propylthio-3-methacrylate groups/methacrylate/methacrylic acid taught by Samain et al. to the composition of the combined references because of the expectation of achieving enhanced fixatives properties coupled with softening, disentangling, and good feel to the hair.



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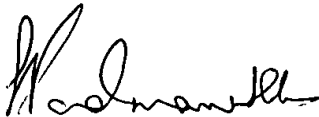
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw  
March 20, 2003

  
SREENI PADMANABHAN  
PRIMARY EXAMINER

4/4/03